

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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NASHVILLE, TENNESSEE 37243-0486

SCANNED

February 26, 1993

OPINION NO. U93-21

Conflict of Interest; Monroe County Commissioner Serving on
E911 Communications District Board

QUESTION

Is it a conflict of interest for a member of the Monroe County Board of County Commissioners to serve as a member of the 911 Emergency Communications District Board of Directors.

OPINION

Yes. Because T.C.A. § 7-86-105(b)(1) gives the Monroe County Commissioners power to appoint the board of directors, public policy prohibits them from appointing one or more of their members to the board.

ANALYSIS

Emergency Communications Districts are created pursuant to T.C.A. §§ 7-86-101 et seq. Pursuant to T.C.A. § 7-86-104, the legislative body of any municipality or county may by ordinance or resolution, respectively, create an emergency communications district within all or part of the boundaries of such municipality or county. The district must be approved by a majority of eligible voters within the area of the proposed district voting at a referendum. T.C.A. §§ 7-86-104 and 105. The method of appointing a board of directors for the district is set forth in T.C.A. § 7-86-105(b)(1). That subsection, applicable to Monroe County, states that "The legislative body may appoint a board of directors composed of not less than seven (7) nor more than nine (9) members to govern the affairs of the district."

The county legislative body for Monroe County is made up of a board of county commissioners. T.C.A. § 5-5-102(f). The question asks whether one or more of the Monroe County Board of County Commissioners could legally serve as a member of the 911 Emergency Communications District Board of Directors. It would first appear there is no state constitutional prohibition. While Article II, Section 26 of the Tennessee Constitution provides "nor shall any person in this State hold more than one lucrative office at the same time," that provision has been interpreted to forbid a person only from holding more than one lucrative office in the State government at the same time, and not to apply to local, either municipal or county, office holding. Phillips v. West, 187 Tenn. 57, 213 S.W.2d 3 (1948); Boswell v. Powell, 163 Tenn. 445, 43 S.W.2d 495 (1931). The positions under consideration are not offices in the State government, so we conclude that one serving simultaneously in them does not violate Article II, Section 26, of the State Constitution. In any event, the board of directors of an emergency communications district is not a lucrative position, in that the board members serve without compensation. T.C.A. § 7-86-105(d).

However, under common law principles of conflicts, this office opines that there is an inherent conflict of interest in the positions. There is a well recognized common law prohibition against a public officer holding two incompatible offices at the same time. State ex rel Little v. Slagle, 115 Tenn. 336, 89 S.W.316 (1905). The prohibition is generally applied when an individual occupies two inherently inconsistent offices. 63A Am. Jur. 2d Public Officers and Employees § 65 (1984). The question of incompatibility of necessity depends on the circumstances of the individual case. For example, an inherent inconsistency exists where one office is subject to the supervision or control of the other. State ex rel v. Thompson, 193 Tenn. 395, 246 S.W.2d 59 (1952).

We have attempted to determine if there is any inconsistency from the statutory scheme relating to the emergency communications district. It would appear an inherent inconsistency exists. The County Commissioners' power to appoint the members of the district's board of directors creates a disqualification for a County Commissioner to serve on the board. It has been stated as a general principle that it is contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint

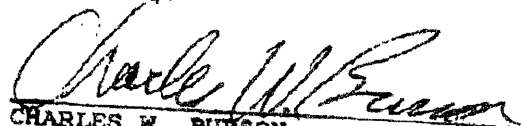
one of its own members. See State ex rel v. Thompson, supra, 193 Tenn. 395, 401 (1952). As noted above, under T.C.A. § 7-86-105(b)(1), the Monroe County Commissioners have the power to appoint the board of directors of the emergency communications district, and the Thompson case could be construed to prohibit the appointment of a Monroe County Commissioner to the board. This Office has taken the position that "a local legislative body is prohibited from appointing or electing one of its own members to an office over which the legislative body has the power of appointment or election." Op. Tenn. Atty. Gen. U90-04 (January 8, 1990) at p. 3; Op. Tenn. Atty. Gen. U92-21 (January 28, 1992) (copies attached). This Office has further concluded in the cited opinions that, where T.C.A. § 5-5-102(c)(3) does not cover a particular situation, the rule in Thompson still applies.

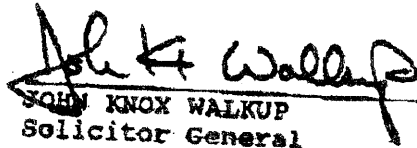
T.C.A. § 5-5-102(c)(3) addresses situations in which a sitting county legislative body member is nominated for or elected to another office and provides:


If any member of the county legislative body accepts the nomination as a candidate for the office of county executive, sheriff, trustee, register, county clerk, superintendent of roads, superintendent of schools, circuit court clerk, assessor of property, judge of a court of general sessions or seat in the general assembly, when such office is being filled by the county legislative body, such member shall automatically become disqualified to continue in office as a member of the county legislative body, and a vacancy on the body shall exist.

T.C.A. § 5-5-102(c)(3) covers only the listed officers, which do not include an emergency communications district board member. Thus, the rule of Thompson applies, and it is the opinion of this Office that public policy prohibits the Monroe County Board of Commissioners from appointing any of its own members to the emergency communications district board of directors.

Sincerely,


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